

SECTION 8. PROPOSAL FORMAT

I. INTRODUCTION

These instructions prescribe the mandatory bid format and the development and presentation of bid information. Format instructions must be followed, all requirements and questions in the IFB must be answered, and all requested data and information must be supplied. Submissions include a Draft Bid and a Final Bid. See Section 2 of this IFB for a description of the bidding steps.

II. DRAFT BID FORMAT AND CONTENT

The draft bid shall be completely sealed and identified by the IFB title, i.e., "DDTP CRS IFB, Draft Bid" and the bidding firm's name. The draft bid shall be submitted to the Procurement Official listed in Section 1 by the time indicated in Section 1, Key Action Dates. One (1) complete set of all required volumes shall be clearly marked "Master Copy".

The draft bid must contain all the material specified below except that there shall be xxxes in place of all cost figures. The completed Master Agreement must also be included. The Master Agreement need not be signed at this point.

The draft bid must be submitted in the number of copies indicated below and include the following items:

A. Volume I - Response to Requirements (7 Sets)

The Bidder's response to the IFB for Volume I must be in the order and format indicated below. Each page must be numbered in a manner of the bidder's own choosing to make easy reference possible.

1. Cover Letter

The Bidder's proposal should contain a cover letter prepared and signed in accordance with Section 2.III.E.5., Signature of Bid.

2. Part 1 - Response to Description of the Required System and Services

This section should contain a brief narrative of the bidder's compliance and/or response for each item (all paragraphs and subparagraphs) identified in Section 4, Description of the Required System and Services. It should reflect the bidder's understanding of the DDTP's proposed CRS operations and requirements, and provide an overview of the bidder's proposed solution. In this respect, it should contain a summary of the salient features of the bidder's proposal including conclusions and generalized recommendations (although recommendations will not be evaluated and will not be a factor in selection of the awarded bidder.) It may include a general overview of the equipment and/or services offered, etc.

3. Part 2 - Response to Administrative Requirements

This section should contain a brief narrative of bidder's compliance and/or response for each item (all paragraphs and subparagraphs) identified in Section 5, Administrative Requirements, of the IFB. Each response shall

reference the appropriate Section 5 paragraph number, and shall be provided in the same paragraph sequence as provided in the IFB.

EXAMPLE:

IFB Section 5.IV - Subcontractors and Suppliers:

Bidder XYZ understands and will comply.

4. Part 3 - Response to Technical Requirements
This section should contain a brief narrative of bidder's compliance and/or response for each mandatory requirement (all paragraphs and subparagraphs) identified in Section 6, Technical Requirements, in keeping with the overall objectives of Section 4, Proposed Status of CRS. Each response shall reference the appropriate Section 6 paragraph number, and shall be provided in the same paragraph sequence as provided in the IFB.
All requirements in this IFB are "mandatory" unless stipulated otherwise. All bidders must provide a brief response to every "mandatory" requirement. Failure to respond to a mandatory requirement may be cause for rejection of the bidder's Final Bid. In addition, in order to be considered for award as the primary provider, a bidder must also provide a brief response to all requirements that are designated as "mandatory-optional," i.e., Video Relay Service and Speech-To-Speech service. Bidders shall indicate the referenced document if the description or discussion is separate from the requirement's immediate response, with appropriate page number(s) or other indications that will lead the evaluation team to easily substantiate compliance with the requirement.
- B. Volume II - Completed Master Agreement (3 Sets)
This part must contain the completed Master Agreement, with DDTP approved contract language, excluding costs. For the draft bid, place xxxes in place of dollar amounts, and do not fill in the effective dates.
- C. Volume III - Supporting Literature (2 Sets)
This volume should contain any supporting information, including technical, referenced in the bidder's other volumes that demonstrates, explains, or supports the claims of the bidder. This volume may be organized in any manner deemed appropriate by the bidder to facilitate DDTP verification of the requirements of this IFB.

III. FINAL BID FORMAT AND CONTENT

The final bid shall be completely sealed and identified by the IFB title, i.e., "DDTP CRS IFB, Final Bid" and the bidding firm's name. The final bid shall be submitted to the

Procurement Official listed in Section 1 by the time indicated in Section 1, Key Action Dates. One (1) complete set of all required volumes shall be clearly marked "Master Copy".

The final bid must be submitted in the same format as the draft bid except that it must include all cost figures, must be signed, and must include any bonding information required with the final bid. It should be a complete and final bid. The completed Master Agreement must also be included. The Master Agreement must be signed at this point. It is important that all cost sheets, with all dollar figures, be included.

The final bid must be submitted in the number of copies indicated below and include the following items:

- | | | |
|------------|---|-------------------------------------|
| Volume I | - | Response to Requirements (7 Sets) |
| Volume II | - | Completed Master Agreement (3 Sets) |
| Volume III | - | Cost Data (2 Sets) |
| Volume IV | - | Supporting Literature (2 Sets) |

The two (2) sets of Volume III - Cost Data, must be separately sealed within an envelope marked on the outside with the bidding firm's name and "Volume III - Cost Data for DDTP CRS IFB, Final Bid."

The two (2) sets of Supporting Literature for the Final Bid may be the same ones submitted for the Draft Bid but supplemented with any needed updates. Changes and/or updated pages must be brought to the attention of the DDTP with submission of the Final Bid.

SECTION 9: BID EVALUATION

I. EVALUATION OF DRAFT BIDS

Draft Bids will be opened at the time designated for receipt and briefly reviewed in an attempt to detect administrative or clerical errors and inconsistencies which, if contained in the Final Bid, may cause the bid to be rejected. If such errors are found that can be corrected without overhauling the bid, the bidder will be notified and given an opportunity to correct the indicated errors before Final Bid submittal. The DDTP will not be in a position during this review to determine if a defect could be material and cause the Final Bid to be rejected or if a defect, even if not material, would cause the Final Bid to be rejected. The DDTP makes no warranty that all such errors will be identified during the review of the Draft Bid or that such errors remaining in the Final Bid will not cause the bid to be rejected.

The evaluation team will review each draft bid and attempt to identify areas of incompleteness, errors, areas needing clarity, *et cetera*. Such findings together with questions, if any, will be communicated to the bidder prior to vendor interviews.

II. EVALUATION OF FINAL BIDS

A. Bid Opening and Validation Check

Each final bid will be date and time marked as it is received and verified that it is properly sealed. Bids will remain sealed until the designated time for opening.

All bids received by the time and date specified in Section 1, Key Action Dates, will be opened at that time. The bids will then be checked for the presence of the required information in conformance with the requirements of this IFB. Absence of required information will deem the bid non-responsive and may cause rejection.

B. Validation Against Requirements

The DDTP will check each bid in detail to determine its compliance to the IFB requirements. If a bid fails to meet an IFB requirement, the DDTP will determine if the deviation is material as defined in Section 2. A material deviation of a "Mandatory" requirement will cause rejection of the bidder. Mandatory requirements include but are not limited to the "Minimum Standards" listed in Section 6. A material deviation of a "Mandatory-Optional" requirement (i.e., "Video Relay" or "Speech-to-Speech") will disqualify the bidder for consideration as the primary provider and will preclude the bidder from offering the Mandatory-Optional item as described in the bidder's response, but it will not preclude the bidder from being considered as a secondary provider. An immaterial deviation will be examined to determine if the deviation will be accepted. If accepted, the bid will be processed as if no deviation had occurred.

C. Primary Vendor Selection

Final selection for the position of primary vendor will be on the basis of the lowest cost for the Minimum Required Service amongst the bids which are responsive to the IFB's Mandatory and Mandatory-Optional requirements. Responsiveness is comprised of meeting the minimum technical and administrative requirements, and conforming to the rules of Section 2. The DDTP reserves the right at any time to reject any or all bids.

D. Secondary Vendor Section

Final selection for a position as secondary vendor will be on the basis of submitting a bid that is responsive to all of the IFB's mandatory requirements, that is not selected for the position of primary vendor. Responsiveness is comprised of meeting the minimum technical and administrative requirements, and conforming to the rules of Section 2. The DDTP reserves the right at any time to reject any or all bids.

III. CPUC APPROVAL

The evaluation team will submit its evaluation and recommendation report to the DDTPAC which will review the evaluation team's findings and submit its findings and recommendations to the California Public Utilities Commission (CPUC). Final selection or other action as deemed appropriate by the CPUC shall be determined by the CPUC.

SECTION 10. DEMONSTRATION

I. GENERAL

The demonstration is intended to afford the DDTP the ability to verify claims made by the proposal in response to the requirements, corroborate the evaluation of the proposal, and confirm that the vendor has the requisite experience with relay service operations.

II. PREPARATION

If requested by the DDTP, the vendor in consideration as the primary vendor must prepare and submit to the DDTP procurement officer a demonstration plan. The plan must include a discussion of what will be demonstrated and how the services to be demonstrated differ from that proposed in response to this IFB.

The vendor must provide or make all necessary arrangements for the demonstration facilities at no cost to the DDTP. The location of the demonstration will be determined by the vendor. Demonstration within California will be attended at the DDTP's expense. Demonstrations outside California will be attended only if the vendor agrees to reimburse the DDTP for all travel and *per diem* expenses. The vendor will be billed by the DDTP. Out-of-state demonstrations will not be attended by more than five (5) persons for up to two (2) days.

III. DEMONSTRATION EVALUATION

Failure of the vendor to demonstrate that it has the required experience with relay system operations as required in this IFB, may cause the proposal to be deemed non-responsive for consideration as the primary vendor. The DDTP reserves the right to determine whether or not the demonstration has been successfully passed.

MASTER AGREEMENT

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which _____, a _____ corporation (hereinafter called the "Contractor"), will provide a statewide telecommunications relay service (known as the California Relay Service, hereinafter called CRS) through which hearing-impaired and speech-impaired persons are provided with access to the telecommunications network in California functionally equivalent to that provided to other telecommunications customers. In accordance with California Code of Regulations, Title 20, Public Utilities Code §2881, the CRS is under the authority of the California Public Utilities Commission (hereinafter called "CPUC") and under the oversight of the CPUC's Deaf and Disabled Telecommunications Program Administrative Committee (hereinafter called "DDTPAC") and the California Relay Service Advisory Committee (hereinafter called "CRSAC").

2. TERM OF AGREEMENT

This Agreement is effective upon signing by the Contractor and the DDTP and formal approval of the CPUC. The term of this Agreement shall be from _____ through _____, subject to the availability of funds, unless earlier terminated by the DDTP in accordance with the termination provisions contained in Paragraphs 23 and 24 herein. The DDTP shall have the option to extend this Agreement for up to two one-year terms as further set forth in the DDTP Invitation to Bid (IFB).

3. PROJECT MANAGERS

The Project Managers for the Contractor shall be

The Project Manager for the DDTP shall be

Ms. Shelley Bergum, Executive Director
DDTP
505 – 14th Street, Suite 400
Oakland, California 94612

The DDTP may change its Project Manager at any time upon written notice to the Contractor by the DDTP's Executive Director. The Contractor's Project Manager shall not be changed without the written approval of the DDTP's Project Manager.

All correspondence and transmittals of formal notifications concerning this Agreement shall be addressed to the Project Managers. The Project Managers shall handle all communications in a timely manner. All formal notices shall be deemed to be delivered five days after mailing by registered or certified mail, return receipt requested. A change of address shall be noticed in the same manner.

4. SCOPE OF WORK

The Contractor shall establish and implement the CRS in accordance with the DDTP's IFB (attached hereto as Exhibit A) as modified by the Contractor's proposal, including written responses to staff questions (attached hereto as Exhibit B and hereinafter referred to as "Contractor's Proposal"), each of which is made a part hereof for all purposes. The terms and conditions of the Master Agreement take precedence over the IFB, which takes precedence over the contractor's proposal.

Beginning on _____ and lasting for the term of this Agreement, the Contractor shall be designated as a provider of CRS within the State of California as authorized by CPUC ruling.

The Contractor shall retain management control of the relay service center(s) provided by said Contractor.

To accomplish the objectives of the CPUC, the DDTP and the Contractor will coordinate and consult on an ongoing basis concerning such matters as, but not limited to, operator proficiencies and training, quality of service and call handling procedures.

The Contractor agrees to implement any reasonable recommendations proposed by the DDTP after such recommendations and costs have been approved by the CPUC. When approved, the costs incurred by the Contractor in implementation of any such recommendations are eligible for reimbursement in accordance with the compensation provisions of Paragraph 7.

5. COST CONTROL AND LIMITATION

The Contractor shall establish a budget detail for the first year of their participation on this project and shall submit a copy to the DDTP for review and approval prior to finalizing this Agreement. The Contractor shall submit a budget annually, according to the timeframe requested by the DDTPAC, for the remainder of its term.

6. SCHEDULING AND COMPLETION OF WORK

The Contractor, if designated the Primary Contractor, shall initiate the CRS on a statewide basis at the time specified in the Key Action Dates set forth in Section 1 of the DDTP's IFB, subject to the approval of this Agreement by the CPUC. Contractors not designated "Primary" by the DDTP may initiate CRS on a statewide basis at the terms and rates established in this Master Agreement and subject to the approval of the CPUC, but must do so no later than five (5) months after such approval.

Time is of the essence in the Agreement and, accordingly, all time limits shall be strictly construed and strictly enforced. The Contractor's failure to meet a deadline imposed hereunder shall be considered a material and significant breach of this Agreement and shall entitle the DDTP to any and all liquidated damages set forth in Paragraph 26.

The Contractor shall submit to the Project Manager of the DDTP a detailed work plan including time lines consistent with the service start-up plan included in the Contractor's proposal and the IFB which details the establishment and implementation of the statewide CRS and the associated time frames. The Contractor shall submit a work plan to the DDTP no later than fourteen (14) calendar days from the date the CPUC approves this Agreement.

The DDTP shall review the Contractor's work plan and authorize its implementation on a mutually agreed to service date. Approval by the DDTP Executive Director of the Contractor's work plan shall in no way relieve or release the Contractor from any other obligations to properly perform and complete the establishment and implementation of a CRS in accordance with this Agreement.

7. COMPENSATION

The Contractor shall be reimbursed for invoices submitted based on actual monthly call volumes billed at the rate established in the "Primary Contractors" response to this IFB and set forth as \$_____ per conversation minute plus any additional cost items approved by both the DDTP and the CPUC.

The DDTP will not compensate the Contractor for any costs incurred for start up or termination of the operation of their CRS.

8. INVOICES AND PAYMENTS

Original, signed invoices shall be submitted monthly to the DDTP Project Manager.

The DDTP shall assure that all invoices are processed in a timely manner.

9. RECORDS MANAGEMENT

All such records, documents, communications, and other materials shall be the property of the DDTP and shall be maintained by the Contractor in a central location as custodian, on behalf of the DDTP, for a period of three (3) years from the date of the final payment under this Agreement, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed with the following qualifications:

If an audit by or on behalf of any duly authorized governmental agency of the State of California has begun but is not completed at the end of the three (3) year period, or if audit findings have not been resolved after a three (3) year period, then the materials shall be retained until the resolution to the DDTP's satisfaction of the audit findings.

10. AUDITS AND INSPECTIONS

The Contractor, by signing this Agreement, authorizes the DDTP or its agents to perform audits and/or inspection of its records at DDTP expense at any reasonable time during the term of this Agreement and for a period of three (3) years following the date of final payment under this Agreement to assure compliance with its terms and/or to evaluate the Contractor's performance hereunder. Should any such audit or inspection establish noncompliance with this Agreement, either in the manner in which conversation minutes are accounted for or in that which they are billed, which caused a monthly invoice to be overstated by 3% or more, the Contractor shall promptly reimburse the DDTP all costs of such audit or inspection. Contractor shall promptly remit to DDTP any amounts by which invoice(s) were overstated. DDTP shall remit to contractor any amounts by which invoices were understated.

11. PERFORMANCE MONITORING

The Contractor shall permit the DDTPAC, CRSAC and any other duly authorized agent or governmental agency to monitor, at Contractor's expense, all such activities conducted by the Contractor pursuant to the terms of this Agreement. As the monitoring agency may in its sole discretion deem necessary or appropriate, such monitoring may consist of evaluation of internal operating and management procedures, examination of program data, special analyses, on-site checking, or any other reasonable procedure.

The DDTP may observe and utilize the Contractor's technique for assuring the accuracy of relayed communications, operator procedures, training procedures, office procedures and testing procedures. The DDTP may not monitor the relay of actual conversation without the approval of both parties to the conversation. The DDTP may arrange for calls to test the accuracy of relayed communications or other factors relating to full and equal access without the permission of the Contractor or the operator involved. Such calls will not be identified as test or monitoring calls.

All monitoring shall be performed in a manner that will not unduly interfere with provision of services by the Contractor hereunder. However, since CRS is to be a 24 hour, 7 days a week service, the monitoring may occur at any time. Duly authorized agents of the DDTP shall have the right to make on-the-spot checks at any time without any warning. The Contractor shall make provisions to allow agents of the DDTP this capability.

The fact that such monitoring is undertaken shall in no way relieve or release the Contractor from its obligation to properly perform its duties in accordance with the Agreement nor from Contractor's full responsibility for damages or loss caused by Contractor, its subcontractors, employees or agents. The Contractor's obligations referenced under this paragraph shall be continual and shall not be affected by DDTP acceptance of invoices. DDTP shall not be required to request any changes based on the monitoring undertaken pursuant to this Paragraph 11.

12. PERFORMANCE BOND

Faithful Performance bonds shall be furnished in the manner described in Section 5 of the IFB.

13. SUBCONTRACTS

For any subcontracts anticipated to equal 15% or more of the contractor's reimbursement, the contractor shall submit any proposed subcontracts to the DDTP for its written approval before entering into the same. No such work shall be subcontracted without the prior approval of the DDTP Project Manager. For purposes of this Agreement, any subcontractors identified in the Contractor's response to this IFB are considered approved. Upon the termination of any such subcontract, the DDTP shall be notified immediately.

14. RELATIONSHIP WITH CONTRACTOR AND SUBCONTRACTOR

The Contractor shall be responsible for all actions of its subcontractors and all payment to its subcontractors. Failure of a subcontractor to perform for any reason shall not relieve the Contractor of the responsibility for competent and timely performance of all duties under this Agreement. The DDTP will not deal with subcontractors except through the Contractor's Project Manager. All agreements with subcontractors shall provide that the subcontractor's sole remedy for non-payment by the Contractor under subcontracts shall be against the Contractor, and not result in liens or claims of any sort against the DDTP.

All requests for changes of work within this Agreement shall be in writing between the Project Manager for the DDTP and the Project Manager for the Contractor.

15. ASSIGNMENT

The Contractor may not transfer by assignment, subcontract, or novation its obligation to perform under this Agreement or any part thereof, unless the prior written approval of the Executive Director of the DDTP.

The Contractor may not, without prior written consent of the DDTP's Executive Director, assign any right that it may have under this Agreement; consent may be given or withheld at the sole discretion of the DDTP, provided that such assignment is expressly made subject to all defenses, set-offs or counter claims which would be available to the DDTP against the Contractor in the absence of such assignment. Such assignment must be in writing and delivered to the DDTP not less than fourteen (14) calendar days prior to the rendering of any invoice, or simultaneously with the rendering of any invoice and attached conspicuously to said invoice.

The DDTP's consent to one or more assignment(s) or subcontractors hereunder shall not constitute a waiver or diminution of the DDTP's absolute right to consent to each and every subsequent assignment or subcontractor.

In the event of any subcontract hereunder to which the DDTP has consented, each such subcontract shall contain a provision that further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the DDTP.

16. INSURANCE COVERAGE

The Contractor shall provide insurance coverage for itself and all of its employees used in connection with performance of services under this Agreement, and insure that all subcontractors shall be similarly covered. Such policies shall be issued by a financially sound carrier and/or carriers and shall be subject to the reasonable approval of the DDTP. Copies of certificates of insurance naming the DDTP as an additional insured shall be provided to the DDTP. Such insurance coverage shall hold the DDTP harmless from all claims of bodily injury, including death, and property damage, including loss of use, by Contractor, its employees, agents or subcontractors and their employees. This insurance will include Workers Compensation as required by law; comprehensive general liability and bodily injury insurance in amount that are commercially reasonable under the given circumstances.

17. REGULATORY AUTHORITY

The Contractor assumes responsibility for compliance with all regulatory requirements of the CPUC, as well as all other applicable laws, ordinances, regulations and rules of federal, state and municipal governments or agencies thereof and shall be liable for any damages caused by violations thereof.

18. CONFLICT OF INTEREST

The Contractor warrants that neither it nor its subsidiaries are currently engaged in any relationship which could result in a conflict of interest in the performance of this Agreement. The Contractor further agrees to refrain from entering into any such relationship, and to notify the Project Manager of the DDTP promptly of any potential conflict of interest for itself or its subcontractors. The DDTP may exercise its option to terminate this Agreement if a conflict is found.

19. INCORPORATION OF REPRESENTATIONS AND WARRANTIES; FURTHER REPRESENTATIONS AND WARRANTIES

This Agreement expressly incorporates the Contractor's representations, certifications and warranties in Exhibits A and B and in other provisions of this Agreement.

The Contractor further represents and warrants:

- a. The Contractor is a corporation duly organized, validly existing in good standing under the laws of the State of _____. The Contractor has all necessary power and authority under applicable corporate law and its organizational documents to own or lease its properties and to carry on the business as it is presently conducted.
- b. The Contractor has full corporate power and authority to execute, deliver and perform this Agreement. The execution and delivery of this Agreement and performance under this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Contractor. This Agreement has been duly executed and delivered and attested to by duly authorized officers of Contractor and is a valid and binding agreement, enforceable against the Contractor in accordance with its terms.

20. GENERAL INDEMNIFICATION; SPECIFIC INDEMNIFICATION REGARDING PATENT AND COPYRIGHT INFORMATION; NOTICES OF PROCEEDINGS

The Contractor agrees to indemnify, defend and hold harmless the DDTP and its officers, agents and employees from any and all claims and losses arising from or relating to any and all contractors, subcontractors, materialmen, laborers and any other persons, firms or corporations furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses arising from or relating to any person, firm or corporation that may be injured or damaged by the Contractor in performance of this Agreement.

The Contractor, at its expense, will defend any claim or suit which may be brought against the DDTP for infringement of United States patents or copyright arising from the Contractor's or CRS's use of any equipment, materials, or information acquired,

prepared, or developed by the Contractor in connection with the performance of this Agreement, and, in any suit, will satisfy any final judgment for such infringement. The DDTP will give the Contractor written notice of such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation. The DDTP may participate in the defense of such action, but no costs or expenses shall be incurred for the account of either party by the other without the other party's written consent.

The Contractor shall promptly notify DDTP in the event that the Contractor learns of any litigation in which it or the DDTP is a party defendant in a case which involves services provided under this Agreement. The Contractor, within five (5) calendar days after being served a summons, complaint or other pleading which has been filed in any federal or state court or any administrative agency, shall deliver copies of such document(s) to the DDTP. The term "litigation" includes an assignment for the benefit of creditors, and bankruptcy, reorganization and/or foreclosure filings.

21. OWNERSHIP OF THE CRS 800 NUMBERS

The DDTP shall retain ownership of the current CRS 800 numbers. The DDTP shall offer the use of those numbers to the primary contractor during the term of this agreement.

22. TERMINATION FOR CAUSE

The DDTP may terminate this Agreement with cause upon written notice to the Contractor. After receiving written notice of said cause, the Contractor shall have forty-five (45) calendar days to cure said cause, except in the case of bankruptcy or insolvency in which case the 45 day period shall not be applicable. If it is impossible for the Contractor to cure said cause within forty-five (45) calendar days, it will be sufficient for the Contractor to show that it is taking all reasonable steps to cure said cause in any expeditious manner. If the Contractor fails to cure said cause to the reasonable satisfaction of the DDTP within such time, the DDTP shall so notify the Contractor by written notice.

For purposes of this Agreement, cause shall be defined to include, but shall not be limited to, such actions as: failure to establish the CRS in accordance with the terms of this Agreement; gross mismanagement, fraud, wanton and material negligence; adjudicated bankruptcy, or otherwise becoming insolvent; any substantial violation of any laws, ordinances, regulations or rules of any federal, state, or municipal governmental authorities; or any major breach of the Contractor's agreement to comply with professional standards and practices relating to the CRS.

In the event that this Agreement is terminated for cause, the Contractor shall only be paid for all services performed to the standards defined herein at the rate stipulated herein prior to termination. The Contractor shall not be entitled to any termination costs. In

addition to these remedies, the DDTP shall retain the right to seek any and all additional rights and remedies afforded by law.

23. TERMINATION AT DDTP'S OPTION

The DDTP may at its option terminate this Agreement at any time upon giving ninety (90) calendar days notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder. In such event, the DDTP shall pay the Contractor for all satisfactory services at the rate stipulated herein. The Contractor shall not be afforded any termination costs.

The DDTP shall retain the right to terminate any Mandatory-Optional item with 30 days notice to the Contractor without nullifying any other contract provisions for services.

24. FORCE MAJEURE

Neither the DDTP nor the Contractor shall be considered in default in the performance of its obligations under this Agreement to the extent that the performance of such obligations is prevented or delayed by any cause beyond the reasonable control of the affected party which such party could not, by due diligence, have avoided. Such causes, including but not limited to, acts of God, acts of governmental authority, floods, explosions and riots, shall not relieve the affected party of liability in the event of its failure to use diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch and to give notice and full particulars of the same in writing to the other parties as soon as possible after the occurrence of the cause that prevented or delayed performance of obligations.

25. LIQUIDATED DAMAGES FOR FAILURE TO MEET PERFORMANCE REQUIREMENTS

The parties acknowledge that in the event of a failure by the Contractor to meet the performance requirements listed in the IFB (Exhibit A), damage shall be sustained by the DDTP and that it is and will be impractical and extremely difficult to ascertain and determine the actual damages which the DDTP will sustain in the event of and by reason of such failure; and the Contractor therefore agrees that it will pay the DDTP for such failures, at the sole discretion of the DDTP, the amounts set forth below.

The sole purpose of liquidated damages is to assure adherence to the performance requirements in the contract. The liquidated damages amounts set forth below have been agreed upon by the parties as a reasonable estimate of damages. No punitive intention is inherent. Written notification of each failure to meet a performance requirement will be given by the DDTP to the Contractor. In the event the Contractor has not met the performance requirements by the due date, liquidated damages may be imposed retroactively to such date.

Excessive Call Blockage

The minimum standard is that no more than a daily average of 1% of all calls to CRS shall receive a busy signal. Liquidated damages are \$2,000 per day for each calendar day the blockage rate requirement is not met.

Excessive Time to Answer Calls

The minimum standard is that calls to CRS be answered with an average daily answer time of 7 seconds, to assure that 85% of all calls are answered within 10 seconds. Liquidated damages are \$2,000 per day for each calendar day the answer time requirement is not met.

26. COLLECTION OF DAMAGES (ACTUAL AND LIQUIDATED)

Amounts due the DDTP as actual or liquidated damages may be deducted by the DDTP from any money payable to the Contractor pursuant to the Agreement or otherwise as a debt due the DDTP. The DDTP shall notify the Contractor in writing of any claim for actual or liquidated damages pursuant to this provision at least ten (10) calendar days prior to the date the DDTP deducts such sums from money payable to the Contractor.

27. SEVERABILITY

During any period in which any provision of this Agreement shall be held unlawful or otherwise unenforceable, such provision shall be severed and deemed deleted, and the remainder of this Agreement shall continue in full force and effect as if such provision had never existed.

28. HEADINGS

The headings used in this Agreement are for the convenience of reference only and not intended, to any extent for any purpose, to limit or define the text of any paragraph herein.

29. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California as applied to contracts formed and wholly performed in California, and enforced in and by the courts in the State of California.

30. WAIVER

Waiver, whether formal or constructive, by DDTP of strict performance of any provision of this Agreement in any specific instance shall not be deemed a waiver of, nor shall it prejudice DDTP's right to require strict performance of, the same provision or any other provision in the future.

31. TAXES, FEES AND LICENSES

All sales, property, excise and other federal, state and local taxes, licenses or fees, if any, resulting from this Agreement shall be paid by the Contractor.

32. MODIFICATIONS TO AGREEMENT

The DDTP may request, at its sole discretion and by written notice, that certain changes be made to the general scope of work without invalidating this Agreement. No changes in the scope of work shall be made by the Contractor without the prior written approval of the Executive Director of the DDTP.

Upon receipt of any such written request from the Executive Director of the DDTP for a change to the general scope of work, the Contractor at Contractor's expense shall within a reasonable time thereafter, submit to the DDTP a detailed written price and schedule adjustment to this Agreement. The Contractor shall not begin such work prior to DDTP approval of the modification and associated costs.

This Agreement and all obligations hereunder are subject to all applicable laws, rules, obligations and orders or ruling of any authorized court, agency or commission of federal or California government. This Agreement is subject to changes or modifications that may from time to time be directed by the Federal Communications Commission or the State of California. Any such changes or modifications shall be subject to the procedure set forth in this Agreement.

33. CONFLICTING DOCUMENTS

To the extent, if any, that this Agreement conflicts with the IFB and/or Contractor's proposal, this Agreement shall take precedence and control. To the extent, if any, that the IFB and the Contractor's proposal conflict, the Contractor's proposal shall take precedence and control.

34. ENTIRE AGREEMENT; COUNTERPARTS

This Agreement, incorporating Exhibits A and B, constitutes the entire Agreement between the parties hereto. No other Agreement, statement, or promise relating to the subject matter of this Agreement which is contained herein shall be valid or binding. No changes, alternatives or modifications hereto shall be effective unless in writing and signed by a representative of each party authorized to bind said party. This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which shall constitute one and the same instrument.

Executed this _____ day of _____, 1996.

For the Deaf and Disabled Telecommunications
Program Administrative Committee:

For the Contractor:

